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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

)	Case No.:
MARGARITA QUIROZ,)	
)	COMPLAINT FOR DAMAGES
Plaintiff,)	1. VIOLATION OF THE
)	TELEPHONE CONSUMER
v.)	PROTECTION ACT,
)	2. .47 U.S.C. §227 ET. SEQ.;
CAPITAL ONE BANK (U.S.A.),)	
N.A.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

COMPLAINT

MARGARITA QUIROZ (“Plaintiff”), by and through her attorneys,
KIMMEL & SILVERMAN, P.C., alleges the following against CAPITAL ONE
BANK (U.S.A.), N.A. (“DEFENDANT”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection
Act, 47 U.S.C. §227.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant regularly conducts business in the State of California, thus, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing in Salinas, California 93906.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

7. Defendant is a corporation with its principal place of business located at 1680 Capital One Drive, McLean, Virginia 22102.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number.

11. Plaintiff has only used this phone as a cellular telephone.

1 12. Beginning in June 2015 and continuing thereafter, Defendant called
2 Plaintiff on her cellular telephone multiple times per day.

3 13. When contacting Plaintiff on her cellular telephone, Defendant used
4 an automatic telephone dialing system.

5 14. The automated calls would began with a discernible ten to fifteen
6 seconds delay before calls were transferred to representatives.

7 15. Defendant's telephone calls were not made for "emergency purposes;"
8 rather, Defendant was calling to collect a \$500 account balance owed by Plaintiff's
9 husband.

10 16. In July 2015, Plaintiff spoke with Defendant's representatives and
11 requested that their repeated calls stop immediately.

12 17. Thereafter, Defendant ignored Plaintiff's revocation and call her
13 cellular telephone number multiple times daily.

14 18. Plaintiff was aware that Defendant was calling her because she spoke
15 to male and female representatives who identified their company name during
16 calls.

17 19. These calls were aggravating and annoying for Plaintiff, particularly
18 since many of these calls were made during times when she was at work.

19 20. Plaintiff received silent voice messages from Defendant where she
20 could hear the caller hang up at the conclusion of the messages.

1 21. After Plaintiff's repeated requests to stop calling were ignored by
2 Defendant, she took measures to block their calls by downloading a blocking
3 application.
4

5 22. Upon information and belief, Defendant's business practices violate
6 the Telephone Consumer Protection Act.
7

8 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**
9 **PROTECTION ACT**
10

11 23. Plaintiff incorporates the forgoing paragraphs as though the same were
12 set forth at length herein.
13

14 24. Defendant initiated automated calls to Plaintiff using an automatic
15 telephone dialing system.
16

17 25. Defendant's calls to Plaintiff were not made for emergency purposes.
18

19 26. Defendant's calls to Plaintiff, on and after July 2015, were not made
20 with Plaintiff's prior express consent.
21

22 27. Defendant's acts as described above were done with malicious,
23 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
24 under the law and with the purpose of harassing Plaintiff.
25

26 28. The acts and/or omissions of Defendant were done unfairly,
27 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
28 lawful right, legal defense, legal justification or legal excuse.

1 29. As a result of the above violations of the TCPA, Plaintiff has suffered
2 the losses and damages as set forth above entitling Plaintiff to an award of
3 statutory, actual and treble damages.
4

5
6 WHEREFORE, Plaintiff, MARGARITA QUIROZ, respectfully prays for a
7 judgment as follows:
8

- 9 a. All actual damages suffered pursuant to 47 U.S.C. §
10 227(b)(3)(A);
11 b. Statutory damages of \$500.00 per violative telephone call
12 pursuant to 47 U.S.C. § 227(b)(3)(B);
13 c. Treble damages of \$1,500.00 per violative telephone call
14 pursuant to 47 U.S.C. §227(b)(3);
15 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
16 e. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, MARGARITA QUIROZ, demands
a jury trial in this case.

Respectfully submitted,

DATED: October 27, 2016

By: /s/ Amy Lynn Bennecoff Ginsburg
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